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The election of EDWARD W. HAMILTON, HENRY R. CONGER, WALTER P. FRANK, EMORY H. SYKES, of the second-year class, to the Board of Editors is announced.

NOTES.

PROPERTY—PARTY WALL AGREEMENTS—IMPLIED CONTRACT THEORY.—The case of *Lincoln* v. *Burrage*, just decided in Mass. (see RECENT CASES), raises again the interesting question of party wall agreements. While no good reason would appear for doubting the soundness of the decision, plaintiff's counsel in his argument relied strongly on *Irving* v. *Turnbull*, L. R., 2 Q. B. (1900), 129. The holding in this case is so novel, and the theory involved so far reaching, as to merit consideration, both in its general aspect and in its application to the case at bar. The facts there were as follows:

X, the owner of adjoining lots, sold them to A and B respectively, each covenanting with the vendor that all division walls should be erected half on his own, half on the other lot, and that when one purchaser used the wall that another purchaser might thus have built, the former would pay the latter half cost. A built on his lot and sold it to C, before B purchased the other lot from X and used the party wall A had so built. C sued B for half the cost of this wall, and the plaintiff had to recover, if at all, independently of any recognized doctrine as to the benefit or burden of a covenant running with the land. Considering for the moment only the covenant between X and A, once X had conveyed to A and covenanted with him, the case stood as one of covenants between adjoining

landowners. Neither in England, where the only privity is that of landlord and tenant, nor probably even on the peculiar American theory of dominant and servient tenement, was there sufficient privity to allow the burden of the covenant to run from X to B. While even the running of the benefit, as involved in the transfer from A to C, would present difficulty in some jurisdictions, such a covenant being held purely personal to A as touching not his land but that of the defendant. *Cole* v. *Hughes*, 54 N. Y., 444 (1873); *Gibson* v. *Holden*, 115 Ill., 199 (1885). In England, on the other hand, the beneficiary of a contract cannot sue, and C had no rights on the covenant subsequently entered into between X and B. Hence the problem confronting the Court was how to find sufficient privity of contract to allow a recovery. A recent article (14 *Harv. Law Rev.*, 297), while condemning the reasoning of the Court, advocates a recovery by the plaintiff on the theory of covenants running with the land. Where such an agreement, it was said, has regard to any wall that may be built, and not to a specific wall, it is a continuing covenant, encourages the adjoining owner to build, or rebuild if the first wall is destroyed, leads to the improvement of the land, and should not be deemed a burden or precluded as such from passing to the vendee. We venture to think the average business man would be surprised at a theory which characterizes as beneficial to his land a restriction pecuniarily injurious to himself as owner. The agreement, it is submitted, really benefits the land of him who has built the wall and is entitled to the money; as to the other lot it is properly a burdensome restriction. Thus this theory is unsatisfactory, and we are led to examine the reasons advanced by the English Court, for on these, if at all, is the case to be supported. The argument is briefly as follows:

The defendant, it is said, by his contract with X had clearly intended to make himself liable to *some one.* While the plaintiff had acquired from A both the latter's "license" [easement?] to build and maintain a wall on the adjoining land and his right to be paid therefor. Hence, the circumstances were sufficient to raise a privity and an implied contract between the plaintiff and the defendant at the moment of the user of the wall by the latter. The weak spot in the reasoning is that it fails to show any consideration by plaintiff for defendant's promise to pay, and it would seem that none can be shown. But the interesting point lies in the fact that equity would certainly have decreed specific performance of a restrictive covenant under exactly similar circumstances, and the Court is apparently seeking to apply to affirmative covenants at law the doctrine which obtains in regard to restrictive covenants at equity—that they will be enforced against the covenantee or his assignee with notice in favor of any third party holding the land meant to be benefited thereby, whether he previously had knowledge of the restriction or not. But the doctrine of equitable easements as developed rests on no theory of contracts, and it would seem at least a questionable step to extend the principle there involved to actions at law.

Assuming, however, that *Irving* v. *Turnbull* is correctly decided,

it does not control *Lincoln* v. *Burrage*. The defendant in this case had never contracted with any one unless the covenant of his vendor ran with the land, while the plaintiff no longer retained any interest in the adjoining property. The Court which decided *Irving* v. *Turnbull* would doubtless have held the same as the Supreme Court of Mass.

INSURANCE.—ONE YEAR TERM POLICIES.—Few decisions of recent years have so excited the interest of life insurance people as that of the *Bankers' Life Insurance Company of New York* v. *Insurance Commissioners*, 48 Atl.—, decided January 30, 1901. The Supreme Court of Vermont granted a mandamus to license the petitioners to do business in Vermont. The statute of that State directs that a foreign insurance company shall be licensed only after the company has proved that it possesses *inter alia* assets equal in amount to its outstanding liabilities "reckoning the premium reserve on its life risks based on the Actuaries' Tables of Mortality, with interest at four per cent., as a liability." V. S., § 4178. The petitioners claimed that their policies were so worded as to amount to two contracts, viz., a one year term policy and a life policy to commence one year from date. This first year term policy, the company claimed, required no reserve. The difference between "term" and "life" insurance is most important. In the former, the policy holder is insured only during the term, with no right to renew the contract at the same rate. Thus, a man who insures his life annually, by one year terms, would pay rapidly increasing premiums each year, whereas if he takes out a life policy he starts at a much higher rate which, however, remains uniform. In life insurance a company insures a rapidly increasing risk at a uniform rate by collecting a reserve, when the policy begins to run, sufficient to bring the premiums up to the cost of insurance when the policy and the insured are old. The commissioners had refused to license the petitioners on the ground that the policies in question were, in fact, life policies, requiring a reserve from the first year. The obligations and rights of both parties were identical with those in the ordinary life policy; therefore, to call the first year a term policy was a mere misnomer, (1899 Vt. Ins. Com. Report, p. 12). Chief Justice Taft, in delivering the unanimous decision of the Court, paid little, if any, attention to the contentions of counsel of either of the parties and decided the case on points not raised by counsel in their briefs or in argument. He said that the spirit of the statute was directed against insolvent companies, and that the premium reserve was no test of a companies' actual solvency. Actuarial science required that all companies must collect a reserve to meet the increasing risks of life insurance, but it made no difference when this reserve was collected. To require a young company to accumulate a sufficient reserve during its first year would be to smother it in its swaddling clothes. The petitioner's interpretation of the statute "would create such monopolies that the modern trusts would blush for their departing laurels." From a legal point of view it is unfortunate that